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212-701-3008

April 26, 2021

Re: *United States v. Michelle Morton*, S3 16 Cr. 371 (RA)

Dear Judge Abrams:

We represent Michelle Morton in the above-captioned matter and write to respectfully request that the Court adjourn Ms. Morton's surrender date, which is currently scheduled for May 18, 2021, for a period of six months, until November 18, 2021. As detailed below, Ms. Morton [REDACTED]

[REDACTED] Accordingly, we respectfully request that the Court allow this process to conclude before she is required to surrender, which should also allow dangers associated with the ongoing pandemic to further abate.¹

BACKGROUND

I. Procedural History

On November 18, 2020, the Court sentenced Ms. Morton to a term of fifteen months' imprisonment followed by three years' supervised release. Dkt. No. 948. As documented in our sentencing submission, [REDACTED] all of which place her at a high risk for developing serious complications from COVID-19. Dkt. No. 938, at 1. Acknowledging that Ms. Morton's health and safety would be at risk if she started her custodial sentence before the pandemic was under control, the Court scheduled Ms. Morton's surrender date for May 18, 2021. Dkt. No. 946, at 42-3. The Court also

¹ We have informed the government of this request and they have asked us to convey to the Court that they expect to respond with their position by April 30, 2021.

noted that it would consider a second adjournment past May 18, 2021, but made clear that it would not grant an indefinite adjournment. *See id.* at 43.

II. Relevant Facts

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ARGUMENT

I. Ms. Morton Would Face Life-Threatening Consequences Should the Court Enforce Her May 18 Surrender Date

A. Ms. Morton's [REDACTED] Requires an Adjournment of the Surrender Date

The Court should adjourn Ms. Morton's May 18 surrender date to allow her medical team to determine [REDACTED]

[REDACTED] We do not expect that this evaluation process will be complete by May 18 and, [REDACTED]

[REDACTED] We expect that Ms. Morton's medical team will be in a much better position to understand these related issues in the fall. Requiring Ms. Morton to surrender now would force her [REDACTED]

As detailed extensively in our sentencing submissions, Ms. Morton's chronic health conditions already put her at an increased risk of severe illness if she were to contract COVID-19—a risk that remains high given [REDACTED] See Dkt. Nos. 938, 940. At sentencing, the Court recognized the risk to Ms. Morton should she contract COVID-19, and scheduled a May 18 surrender date to allow her to serve once the pandemic was under control, noting that that date could also be revisited if necessary. We respectfully submit that an additional adjournment is in fact necessary, for several reasons.

First, Ms. Morton's [REDACTED] places her in an even more precarious situation should she contract COVID-19, because COVID-19 is associated with an increased risk of

[REDACTED] Notably, the increased [REDACTED] for COVID-19 patients has been found in young, otherwise healthy patients without [REDACTED]

[REDACTED] Finally, at least three studies have suggested that black COVID-19 patients have a [REDACTED]

Courts in this District have delayed surrender to address defendants' health concerns related to COVID-19 and to permit vaccination, even when the imposition of noncustodial sentences has been denied. This Court recently extended the defendant's self-surrender date for a fifth time, "in order to allow him to secure a vaccination, should he so choose." *United States v. Burgos*, No. 18 Cr. 570 (RA), 2021 WL 1226958, at *2 (S.D.N.Y. Apr. 1, 2021). Similarly, in *United States v. Booth*, Judge Koeltl found it was appropriate to delay the defendant's surrender date for four months which "may provide useful information about the facility to which the defendant is designated . . . [and] allow some improvement in the state of the current pandemic."

¹³ Additionally, the Johnson & Johnson and AstraZeneca vaccines have been associated with a rare and severe type of blood clot in women, which can cause strokes. Kathy Katella, *The Johnson & Johnson Vaccine & Blood Clots: What You Need to Know*, YALE MEDICINE (April 23, 2021), <https://www.yalemedicine.org/news/the-covid-vaccine-blood-clots>. The Johnson & Johnson vaccine now comes with an added warning on its fact sheet specifically mentioning of that possibility. *See id.*

No. 19 Cr. 699 (JGK), 2021 U.S. Dist. LEXIS 9721, at *2 (S.D.N.Y. Jan. 19, 2021). In *United States v. Jordan*, Judge Woods granted four separate extensions of the defendant's surrender date after reasoning that doing so was "a reasonable and targeted way to address the concerns articulated by [the defendant]," 472 F. Supp. 3d 59, 64 (S.D.N.Y. 2020), including a high risk for severe illness and death should she contract COVID-19, due to her compromised immune system, Type II diabetes, high blood pressure and chronic obstructive pulmonary disease. See Memo Endorsed granting Letter Motion, No. 19 Cr. 478 (GHW), Dkt. No. 44 (October 10, 2020); see also *Jordan*, Memo Endorsement granting Letter Motion, Dkt. No. 36 (March 20, 2020); Memo Endorsement on Letter Motion, Dkt. No. 46 (March 18, 2021) (granting extension in response to the defendant's request to obtain a vaccine and develop full immunity after the second dose).¹⁴

Second, Regardless of COVID-19, courts in this District have also granted adjournments to defendants' self-surrender dates in order to accommodate their medical treatment. For example, in *Goode*, Judge McMahon adjourned sentencing "several times over nine months at [the] defendant's request to accommodate her ongoing medical care", which included dialysis multiple times a week, and a kidney transplant. No. 14 Cr. 810 (CM), 2020 WL 4586254, at *4 n.2 (S.D.N.Y. Aug. 10, 2020). Similarly, in *United States v. Bayard*, Judge Seibel delayed the defendant's self-surrender date where his dermatologist had prescribed a cream to treat pre-cancerous cells on the defendant's face and which caused him significant pain and increased his susceptibility to infection. See Letter Motion, No. 18 Cr. 771 (CS), Dkt. No. 12 (January 3, 2020); Memo Endorsed re: Letter Motion, Dkt. No. 17 (January 7, 2020). In *United States v. Callan*, a court in the District of Connecticut extended the defendant's surrender date so that he could receive care after experiencing a medical emergency, and subsequently granted a second extension for six months after the defendant's cardiologist expressed hope that they would be able to "stabilize his cardiac status" if he completed his cardiac rehabilitation regime and maintained compliance with his doctor's orders. No. 19 Cr. 140 (VLB), 2020 U.S. Dist. LEXIS 72508, at *4, 7 (D. Conn. Apr. 24, 2020).

¹⁴ The Eastern District of New York has also utilized a delayed self-surrender as a way of handling unvaccinated defendants during the COVID-19 pandemic. See e.g. *United States v. Johnson*, No. 16 Cr. 457 (NGG), 2021 U.S. Dist. LEXIS 24204, at *1 (E.D.N.Y. Feb. 9, 2021) (agreeing that resuming defendant's term of imprisonment prior to receipt of COVID-19 vaccine poses an unjustified risk to his health and extending surrender date until either August 1, 2021 or three weeks after his final dose of a COVID-19 vaccine).

[REDACTED]

[REDACTED]

B. COVID-19 Is Still Uncontrolled in the Bureau of Prisons

At Ms. Morton's sentencing, the Court expressed potential willingness to adjourn Ms. Morton's sentencing further past May 18, 2021 if conditions related to the pandemic were still not under control. *See* Dkt. No. 946, at 42-3. We respectfully submit that, regardless of Ms. Morton's significant new medical issues, the ongoing pandemic justifies such a further adjournment.

Although COVID-19 vaccines have been an encouraging step in the worldwide recovery from the pandemic, they have not halted the rapid spread of the virus in prisons. This month, the *New York Times* reported that the rate of infection inside prisons is 34 in 100, more than three times as high as the infection rate in the United States.¹⁹ At least 39% of prisoners in federal

[REDACTED]

¹⁹ *See* Eddie Burkhalter et al., *Incarcerated and Infected: How the Virus Tore Through the U.S. Prison System*, THE NEW YORK TIMES, (April 10, 2021), <https://www.nytimes.com/interactive/2021/04/10/us/covid-prison-outbreak.html>.

facilities have been infected, although “[t]he true count is most likely higher because of the dearth of testing” *Id.*

To date, only about one-third of inmates in Bureau of Prisons (“BOP”) custody have received both doses of the vaccine.²⁰ And although every employee of the BOP has been offered the vaccine, just over 50% have accepted it. *See id.* A recent report by the Marshall Project regarding the low vaccination rates among correctional officers found that the officers are “declining the coronavirus vaccine en masse.”²¹ Because prison staff move between prisons and their homes, “they create a pathway for the virus to spread.” *Id.* Notwithstanding the danger this poses for unvaccinated inmates and the community, the BOP cannot compel employees to get vaccinated because the vaccines still only have emergency, and not actual, approval from the FDA.²²

Given Ms. Morton’s current poor health and requirements for medical treatment, she may be required to serve her time in custody in Federal Medical Center (“FMC”) Carswell, which is the only federal medical facility for women. In July, FMC Carswell had the second-worst COVID-19 outbreak of all the federal prisons, with over 500 out of 1,357 incarcerated women testing positive.²³ As recently as the end of January 2021, another two hundred women tested positive in FMC Carswell, making it once again the prison with the second most cases out of all federal prisons.²⁴ As Judge McMahon recognized when granting a motion for compassionate release, “the abominable COVID-19 statistics at FMC Carswell suggests that the trust this Court once placed in the BOP for an inmate with [the defendant’s] complicated health conditions is no longer warranted.” *Goode* at 5.

Even before the pandemic, FMC Carswell had been the subject of multiple lawsuits and media reports alleging medical malpractice, egregious medical neglect and sexual abuse of its inmates.²⁵ The *Fort Worth Weekly* reported that the FMC “has a long history of medical neglect,

²⁰ *See All Federal Inmates To Be Offered Vaccine By Mid-May, BOP Director Says*, NPR (April 16, 2021), <https://www.npr.org/2021/04/16/988237102/all-federal-inmates-to-be-offered-vaccine-by-mid-may-bop-director-says>.

²¹ “*Hell No*”: *Correctional Officers Are Declining The Coronavirus Vaccine En Masse*, THE MARSHALL PROJECT (March 15, 2021), <https://www.themarshallproject.org/2021/03/15/hell-no-correctional-officers-are-declining-the-coronavirus-vaccine-en-masse>.

²² *See* Michael Carvajal Testimony before the House Appropriations Subcommittee On Commerce, Justice, Science and Related Agencies, C-SPAN (March 18, 2021), <https://www.c-span.org/video/?509989-1/covid-19-pandemic-federal-prisons>.

²³ *See COVID-19 Outbreak Reported at Fort Worth Federal Medical Prison*, NBC DFW (July 21, 2020), <https://www.nbcdfw.com/news/coronavirus/covid-19-outbreak-reported-at-fort-worth-federal-medical-prison/2410816/>.

²⁴ *See* Kaley Johnson, *Women’s Prison in Fort Worth again ‘full of COVID,’ 2 die from virus at men’s prison*, FORT WORTH STAR-TELEGRAM (January 24, 2021), <https://www.star-telegram.com/article248735465.html>.

²⁵ *See* Betty Brink, *A Crack in the Carswell Wall*, FORT WORTH WEEKLY (January 31, 2007), <https://www.fwweekly.com/2007/01/31/a-crack-in-the-carswell-wall/>; Betty Brink, *Death by Indifference*, FORT WORTH WEEKLY (April 18, 2012), <https://www.fwweekly.com/2012/04/18/death-by-indifference/>; *Sexual Predation Rampant at FMC-Carswell; Another Employee Convicted*, PRISON LEGAL NEWS (May 15, 2007), <https://www.prisonlegalnews.org/news/2007/may/15/sexual-predation-rampant-at-fmc-carswell-another-employee->

sexual abuse, and safety violations that have resulted in the untimely death or serious life-altering medical and psychological damage to the victims.”²⁶ As the investigation revealed, “it takes months for inmates, even those with the most critical needs, to get appointments scheduled with outside physicians or hospitals. Women sent there already diagnosed with life-threatening diseases such as ... cancer...have had to wait up to six months or a year to be seen by an outside oncologist.” In 2018, the District of Columbia Corrections Information Counsel, an independent oversight body that inspects and reports the conditions of correctional facilities, published a report in which it discussed the high levels of dissatisfaction with the quality of medical care by inmates, long medical wait times, and recommended that the facility address “the high vacancy of staff in health services to address and reduce the delays in the delivery of services.”²⁷ Such uneven care, especially in the midst of the pandemic, will have a significant impact on Ms. Morton’s ability to [REDACTED]

Finally, continued overcrowding in federal prisons has made it nearly impossible to stop the spread of the virus once it enters a facility.²⁸ According to the Prison Policy Initiative, federal prisons were still operating at 103% capacity as of December 2020.²⁹ Overcrowding, vaccine reluctance among inmates and correctional officers, and the recent spread of more contagious variants in prisons make it difficult to contain the spread of COVID-19 and leave inmates especially vulnerable to infection.³⁰

We sincerely hope that these conditions will have improved by the fall. But unfortunately, federal prison remains an exceptionally dangerous place to be right now for inmates with preexisting medical conditions. Ms. Morton continues to remain on bail without incident and in full compliance with the terms of her release, as she has been ever since her arrest in this matter. Accordingly, we respectfully submit that the factors in favor of an adjournment of her surrender date, including the grave risks to her health that would accompany her incarceration, far outweigh any other considerations.

convicted/ (detailing that in the prior ten years, “seven prison employees – a cook, a counselor, a chaplain, a physician, and [three] guards” have been convicted of sex crimes against female prisoners, and one doctor was fired but never convicted for having sex with a prisoner).

²⁶ *Death by Indifference*, *supra* n. 25 (“[A]lmost since the day it opened, neglect has been a constant at Carswell too, with horror stories of fatal delays in care and even rape surfacing repeatedly through the years”).

²⁷ *FMC Carswell Federal Medical Center Inspection Report*, DISTRICT OF COLUMBIA CORRECTIONS INFORMATION COUNCIL, at 11-17 (July 6, 2018), <https://cic.dc.gov/sites/default/files/dc/sites/cic/publication/attachments/FMC%20Carswel%20Inspection%20Report%20and%20BOP%20Response%207.6.18.pdf>. For example, one inmate with multiple sclerosis was not prescribed any medication and did not receive proper treatment for nine months, and as a result, her health had deteriorated so much she had become wheelchair bound. Another inmate reported a wait time of two weeks after submitting a sick call form; yet another reported not even being seen by a doctor even after submitted several sick call forms. *See id.*

²⁸ *See Since you Asked: Just how overcrowded were prisons before the pandemic, and at this time of social distancing, how overcrowded are they now?* PRISON POLICY INITIATIVE (December 21, 2020), <https://www.prisonpolicy.org/blog/2020/12/21/overcrowding/>.

²⁹ *See id.*

³⁰ *See Incarcerated and Infected*, *supra* n. 19.

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* * *

Given the above, we respectfully request that the Court grant Ms. Morton's request for a six-month adjournment of her surrender date, in order to allow her physicians to continue [REDACTED] and to permit additional time for the pandemic to abate within the federal prison system.

Dated: April 26, 2021
New York, New York

Respectfully Submitted,

/s/ Nola B. Heller

Nola B. Heller
Samantha Lawson


Hon. Ronnie Abrams
Thurgood Marshall United States Courthouse
Courtroom 1506
40 Foley Square
New York, NY 10007

BY E-MAIL

Cc: AUSA Rebecca Mermelstein
AUSA Negar Tekei
AUSA Elizabeth Hanft

Ms. Morton's surrender date is adjourned to August 18, 2021. Ms. Morton shall provide monthly updates on her recovery and vaccination efforts until her surrender.

SO ORDERED.



Ronnie Abrams, U.S.D.J.
May 4, 2021

EXHIBIT 1

Document Filed Under Seal Pursuant to the Court's
Individual Rules, Rule 10(E)(i)

EXHIBIT 2

Document Filed Under Seal Pursuant to the Court's
Individual Rules, Rule 10(E)(i)

EXHIBIT 3

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Individual Rules, Rule 10(E)(i)

EXHIBIT 4

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Individual Rules, Rule 10(E)(i)

EXHIBIT 5

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Individual Rules, Rule 10(E)(i)

EXHIBIT 6

Document Filed Under Seal Pursuant to the Court's
Individual Rules, Rule 10(E)(i)

EXHIBIT 7

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Individual Rules, Rule 10(E)(i)